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No. **34**

In the Supreme Court of the United States

OCTOBER TERM, 1938

**ESTATE OF CHARLES HENRY SANFORD, DECEASED,
JENNIE R. BAIRD, ADMINISTRATRIX, C. T. A.,
PETITIONER**

v.

**GUY T. HELVERING, COMMISSIONER OF INTERNAL
REVENUE**

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE THIRD
CIRCUIT**

MEMORANDUM FOR THE RESPONDENT

In the Supreme Court of the United States

○ OCTOBER TERM, 1938

No. 881

ESTATE OF CHARLES HENRY SANFORD, DECEASED,
JENNIE R. BAIRD, ADMINISTRATRIX, C. T. A.,
PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL
REVENUE

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE THIRD
CIRCUIT

: MEMORANDUM FOR THE RESPONDENT

We do not oppose the granting of a writ of certiorari in this case.

The court below has in the present case followed the reasoning of the majority opinion in *Hesslein v. Hoey*, 91 F. (2d) 954 (C. C. A. 2d), certiorari denied, 302 U. S. 756, stating, however, that had it not been for the ruling by the Second Circuit and the action of this Court in denying certiorari it would have favored a different view. This statement by the court below and the dissent in the *Hesslein* case indicate that the question involved

(1)

— is not free from doubt. Because of the uncertainty of the ultimate decision and the varying position of the taxpayers the Government has, since the *Hesslein* decision, taken both sides of the question in order to protect itself. See *Humphreys v. Rasquin*, 101 F. (2d) 1012 (C. C. A. 2d), in which the Government is filing a petition for certiorari.

As was pointed out in the petition for certiorari in the *Hesslein* case, the Government feels that it is important in the administration of the revenue laws that the question of statutory construction here presented be settled, and accordingly it does not oppose the granting of the writ in the instant case.

Respectfully submitted.

ROBERT H. JACKSON,
Solicitor General.

APRIL 1939.

